

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10733 of 1998

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

DINESH HIMATLAL CHHARA

Versus

COMMISSIONER OF POLICE

Appearance:

MS DR KACHHAVAH for Petitioner

MS PUNANI AGP for Respondent No. 1

NOTICE SERVED for Respondent No. 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 24/07/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective parties.

The petitioner challenges the order of preventive detention dated 9th October, 1998, made by the Commissioner of Police, City, under the powers conferred

upon him under sub-section (1) of section 3 of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the Act').

Five offences punishable under sections 379 and 114 IPC are registered against the petitioner. First of the offence has been registered on 23rd September, 1998, and the remaining four offences have been registered on 1st October, 1998. In connection with each of the aforesaid offences, the petitioner was arrested on 3rd October, 1998. Considerable amount of cash was recovered from the petitioner. The petitioner was released on bail in each of the aforesaid cases on 8th October, 1998. In the mean time, on 5th October, 1998 and 7th October, 1998, police seems to have recorded statements of the witnesses, whose identity has been withheld. In each of the incidents narrated by the witnesses, it appears that the witness, upon refusing to submit to the demands of the petitioner and one another, was dragged to a public place and beaten. The crowd gathered at the place of incident was also dispersed by the petitioner by administering threat. It is, therefore, held that the petitioner is a habitual offender who has repeatedly committed offences punishable under Chapter-XVII of the IPC. The petitioner's activities are also found to be detrimental to the maintenance of public order.

It does appear that the petitioner has repeatedly indulged himself in commission of offences punishable under Chapter-XVII of the IPC, however, neither of the said offences can be said to be detrimental to the maintenance of public order. Each of the offences is directed against the individual, therefore, it can be said to be a problem of law and order. Besides, the statements of the witnesses do not reveal that the incidents in question caused terror or a feeling of insecurity in the minds of the people. The said offences also are directed against the witness concerned and can not amount to breach of public order. Since none of the activities of the petitioner can be said to be detrimental to the public order, the order of preventive detention under the Act is made without the authority of law. Same is, therefore, vitiated.

Petition is allowed. The impugned order dated 9th October, 1998 (Annexure-A to the petition) is quashed and set aside. Rule is made absolute. The petitioner, unless is required to be detained in some other case, be released forthwith.

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JOSHI